UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

ARTHUR NADEL,
SCOOP CAPITAL, LLC,
SCOOP MANAGEMENT, INC.,

Defendants,

CASE NO.: 8:09-cv-0087-T-26TBM

SCOOP REAL ESTATE, L.P.,
VALHALLA INVESTMENT PARTNERS, L.P.,
VALHALLA MANAGEMENT, INC.,
VICTORY FUND, LTD,
VIKING IRA FUND, LLC,
VIKING FUND, LLC, AND
VIKING MANAGEMENT, LLC.

Relief Defendants.
_____/

DECLARATION OF BURTON W. WIAND
IN SUPPORT OF THE RECEIVER'S MOTION TO EXPAND THE SCOPE OF RECEIVERSHIP TO INCLUDE QUEST ENERGY MANAGEMENT GROUP, INC.

Burton W. Wiand declares as follows:

1. I am an attorney with Wiand Guerra King P.L. in Tampa, Florida. I have personal knowledge of, or have obtained knowledge through my investigation of matters during the course of this Receivership, the matters asserted herein and am competent to testify thereto.

2. I submit this declaration (the "**Declaration**") in support of the Receiver's Motion To Expand The Scope Of Receivership To Include Quest Energy Management Group, Inc.

3. In the January 21, 2009, Order Appointing Receiver (Doc. 8), the Court appointed me Receiver for Defendants Scoop Capital, LLC ("**Scoop Capital**") and Scoop Management, Inc. ("**Scoop Management**") and Relief Defendants Scoop Real Estate, L.P. ("**Scoop Real Estate**"); Valhalla Investment Partners, L.P. ("**Valhalla Investment**"); Valhalla Management, Inc. ("**Valhalla Management**"); Victory Fund, Ltd. ("**Victory Fund**"); Victory IRA Fund, Ltd. ("**Victory IRA Fund**"); Viking IRA Fund, LLC ("**Viking IRA Fund**"); Viking Fund, LLC ("**Viking Fund**"); and Viking Management, LLC ("**Viking Management**"). Scoop Real Estate, Valhalla Investment, Victory IRA Fund, Victory Fund, Viking IRA Fund, and Viking Fund are collectively referred to as the "**Hedge Funds**." Scoop Management, Viking Management, and Valhalla Management are collectively referred to as the "**Fund Managers**."

4. The Receivership was subsequently expanded to include Venice Jet Center, LLC and Tradewind, LLC (Doc. 17); Laurel Mountain Preserve, LLC, Laurel Preserve, LLC, the Marguerite J. Nadel Revocable Trust UAD 8/2/07, and the Laurel Mountain Preserve Homeowners Association, Inc. (Doc. 44); The Guy-Nadel Foundation, Inc. (Doc. 68); Lime Avenue Enterprises, LLC, and A Victorian Garden Florist, LLC (Doc. 79); Viking Oil & Gas, LLC (Doc. 153); Home Front Homes, LLC (Doc. 172); Traders Investment Club (Doc. 454); Summer Place Development Corp. (Doc. 911); and Respiro, Inc. (Doc. 916). All of the entities in receivership are collectively referred to as the "**Receivership Entities**."

5. I was reappointed as Receiver for the Receivership Entities by Orders dated June 3, 2009 (Doc. 140), January 19, 2010 (Doc. 316), September 23, 2010 (Doc. 493), October 29, 2012 (Doc. 935), and March 7, 2013 (Doc. 984). All Orders appointing and reappointing me as Receiver are collectively referred to as the "**Orders Appointing Receiver.**"

6. Pursuant to the Orders Appointing Receiver, I have the duty and authority to: "administer and manage the business affairs, funds, assets, choses in action and any other property of the Defendants and Relief Defendants; marshal and safeguard all of the assets of the Defendants and Relief Defendants; and take whatever actions are necessary for the protection of the investors." *See* Orders Appointing Receiver at 1-2.

7. I have been assisted in my investigation by my attorneys, accountants, information technology experts, and others. After I obtained control of the Receivership Entities, I, my attorneys, and/or my accountants had discussions and other communications with Arthur Nadel ("**Nadel**") and a number of people associated with Nadel and/or the Receivership Entities, including officers of some of the Receivership Entities and persons responsible for maintaining the financial books of the Receivership Entities and other businesses controlled by Nadel, for operating other businesses controlled by Nadel, for performing accounting services, and for administering the Hedge Funds. We also had communications with and gathered information from many investors in the Hedge Funds.

8. We have reviewed documents located in the Hedge Funds' office, documents obtained from the accountant for the Receivership Entities, information stored on the Receivership Entities' computer network, documents obtained from other businesses

controlled by Nadel, documents obtained from numerous third parties, and information available in the public record.

9. My investigation has revealed that Nadel defrauded investors through his control of the Hedge Funds' advisers and managers. A review of any monthly trading account statement for any of the Hedge Funds would have shown that the trading activity, yields, and amounts in those accounts significantly differed from the information provided to investors in purported periodic Hedge Fund performance statements.

10. My investigation also uncovered evidence that the Fund Managers received substantial amounts of money from the Hedge Funds in the form of purported management, profit incentive, and/or advisory fees.

11. On February 24, 2010, Nadel pled guilty to all counts in his indictment, which charged that he ran the scheme underlying this case from 1999 forward.

12. After my appointment as Receiver, I learned that proceeds of Nadel's fraud had been used to fund Quest Energy Management Group, Inc. ("**Quest**").

13. Chris Moody and Neil Moody (collectively, the "**Moodys**") received more than $43 million in proceeds from Nadel's scheme, and some of those proceeds funded Quest through Viking Oil & Gas, LLC ("**Viking Oil**") and Valhalla Investment. According to both Chris Moody's previously filed affidavit (*see* Doc. 906) and records obtained from the Hedge Funds' and Fund Managers' offices, Chris Moody began working for Valhalla Management and Viking Management in 2003. Specifically, Chris Moody was the Vice-President and Treasurer of Valhalla Management and the Co-Managing Member of Viking Management. Valhalla Management was the General Partner of Valhalla Investment, and Viking

Management was the Managing Member of Viking Fund and Viking IRA Fund (collectively, Valhalla Investment, Viking Fund, and Viking IRA Fund are referred to as the "**Moody Funds**").

14. Neil Moody was a principal, Director, and President of Valhalla Management and also was a principal, Managing Member, and President of Viking Management.

15. The Moodys, however, allowed Nadel to control the Moody Funds and to perpetrate his Ponzi scheme through those and the rest of the Hedge Funds. As a result, the Hedge Funds' performance, as represented to investors and potential investors from 1999 forward (as applicable based on then existing Hedge Funds), was false and was based on grossly overstated investment returns, which were fabricated by Nadel. The Hedge Funds' actual performance was never reported to investors or potential investors.

16. Based on these fabricated investment returns, Nadel caused the Hedge Funds to pay tens of millions of dollars in fees to the Fund Managers, and ultimately, to the Moodys. Specifically, Valhalla Management charged fees to and collected fees from Valhalla Investment for its purported management services. Those fees included (1) a quarterly "Performance Allocation" that was calculated as a percentage of purported net profits from investment and trading activities and (2) a monthly "Management Fee" that was calculated as a percentage of the purported net asset value of the fund. Viking Management charged and collected similar fees from Viking Fund and Viking IRA Fund for its purported management services, except that its "Management Fee" was paid quarterly rather than monthly. In turn, the Moodys funneled those fees to themselves. Those "fees" were based on grossly inflated returns and represented nothing more than Ponzi scheme proceeds.

Overall, the Moodys received more than $43 million from Valhalla Management and Viking Management.

17. As a result of the Moodys conduct, on January 11, 2010, the SEC brought an enforcement action against them, alleging that they violated antifraud provisions of the federal securities laws in connection with their involvement in the scheme. *See generally SEC v. Neil V. Moody & Christopher D. Moody*, Case No. 8:10-cv-00053-T-33TBM (M.D. Fla.) (the "**Moody SEC Action**"). A true and correct copy of the Complaint is attached hereto as **Exhibit A**.

18. In connection with the Moody SEC Action, the Moodys executed Consents in which they agreed "not to take any action ... denying ... any allegation in the complaint ...." True and correct copies of the Consents are attached hereto as **Exhibit B**.

19. A memorandum of understanding dated January 6, 2006 (the "**First Memo**") reflects the Moodys paid $3,000,000 (in scheme proceeds) in exchange for a 40% interest in the "Quest Silverado #1 Production" ("**Silverado**"). A true and correct copy of this memorandum is attached hereto as **Exhibit C**.

20. On April 4, 2007, the Moodys (through Viking Oil) entered into a second Memorandum of Understanding (the "**Second Memo**") with Quest, and agreed to pay $1,000,000 (in scheme proceeds) for an additional 10% interest in Silverado, thereby increasing to 50% the Moodys total stake in that development. A true and correct copy of this memorandum is attached hereto as **Exhibit D**.

21. On November 30, 2007, Quest and, in their individual capacities, Paul Downey (its Chief Executive Officer) and Jeff Downey (its Chief Operating Officer)

(collectively, the "**Downeys**") executed a $600,000 promissory note in favor of Valhalla Investment, which then transferred that amount (in scheme proceeds) to Quest. A true and correct copy of this promissory note is attached hereto as **Exhibit E**. The note is secured by a "preferred, first and only lien on 100% of all of their issued shares of stock in Quest Energy Management Group, Inc. and their value." *Id.* at 2.

22. On July 29, 2008, Valhalla Investment, Quest, and the Downeys amended the original promissory note to reflect an additional loan of $500,000 (in scheme proceeds) from Valhalla Investment, which increased their aggregate indebtedness to Valhalla Investment to $1,100,000. A true and correct copy of this promissory note is attached hereto as **Exhibit F**. The note is secured by a "preferred, first and only lien on 100% of all of their issued shares of stock in Quest Energy Management Group, Inc." *Id.* at 1.

23. Collectively, through Viking Oil and Valhalla Investment, the Moodys funneled at least $5.1 million to Quest. True and correct copies of the pertinent deposit slips produced by Quest are attached hereto as **Exhibit G**.

24. After the collapse of the Nadel scheme, Quest retained Chris Moody as a paid consultant to negotiate a compromise of the promissory notes with me and my counsel. After considerable effort, Quest offered to pay $2.3 million to the Receivership in exchange for a release of all claims. Under the proposed compromise, Quest committed to make the $2.3 million payment within 30 days of the execution of a document reflecting the proposed compromise. A true and correct copy of that document is attached hereto as **Exhibit H**. After the payment, I would then have 10 days to move the Court to approve the proposed compromise, during which time I would hold the $2.3 million in escrow. Like all settlements

in this Receivership, the enforceability of the proposed compromise was conditioned on the Court's approval.

25. Quest, however, never made the $2.3 million payment. As a result, I never moved the Court for approval of the proposed compromise, and the Court never approved it. Consequently, there never was a settlement between Quest and this Receivership.

26. On October 21, 2011, I demanded, through my counsel, Quest and the Downeys repay the full principal amount of the Note ($1,100,000), together with accrued interest ($9,166.67). A true and correct copy of that correspondence is attached hereto as **Exhibit I**.

27. In response, Jeff Downey sent a check in the amount of $9,342.78 with an accompanying cover letter mischaracterizing the interest payment as "another good faith payment toward the amount owed under Quest's settlement agreement with the Receiver." A true and correct copy of that correspondence is attached hereto as **Exhibit J**.

28. On January 3, 2012, I demanded, through my counsel, Quest remove the condition attached to the check, as Quest never paid the $2.3 million and no accommodation (in the form of a "payment plan" or otherwise), was ever agreed to or even contemplated. A true and correct copy of that correspondence is attached hereto as **Exhibit K**.

29. Quest ultimately conceded, removed the restriction, and it continued to make interest payments on the promissory notes. A true and correct copy of the pertinent correspondence is attached hereto as **Exhibit L**.

30. In February 2013, Quest missed a payment and informed me it was "in a temporary cash flow bind."

31. Aside from directing me to "marshal and safeguard all of the assets" of the Receivership Entities and "take whatever actions are necessary for the protection of the investors" (Orders Appointing Receiver at 1), the Orders Appointing Receiver impose on me a duty to "institute such . . . legal proceedings, for the benefit and on behalf of the Receivership Entities and their investors and other creditors as the Receiver deems necessary . . . against any transfers of money or other proceeds directly or indirectly traceable from investors in the Receivership Entities . . . " *Id.* at 2. They also direct me to "apply to this Court for an Order giving the Receiver possession of" funds of "persons who have invested in the Receivership Entities [that] have been transferred to other persons or entities." *Id.* at 23.

32. Including Quest in this Receivership is necessary to marshal and safeguard all of the assets of the Defendants and Relief Defendants.

33. The money transferred to Quest was derived from the fraudulent scheme and that money was used to fund Quest. Because Quest was funded with proceeds of the scheme, and because it would be valuable to the Receivership Estate, the scope of the Receivership should be expanded to include Quest.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Dated this 21st day of March, 2013.

Burton W. Wiand